

HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SWINOMISH INDIAN TRIBAL
COMMUNITY, a federally recognized
Indian Tribe,

Plaintiff,

v.

BNSF RAILWAY COMPANY, a Delaware
corporation,

Defendant.

No. 2:15-cv-00543-RSL

MOTION FOR APPROVAL OF
SUPERSEDEAS BOND TO STAY
ENFORCEMENT OF JUDGMENT
PENDING APPEAL

NOTE ON MOTION CALENDAR:
AUGUST 2, 2024

I. RELIEF REQUESTED

Pursuant to Federal Rule of Civil Procedure 62(d) and Local Civil Rule 65.1, Defendant BNSF Railway Company (“BNSF”) asks this Court to approve the \$426,007,637.00 in security offered by BNSF to stay enforcement of the judgment in this case pending appeal.

II. STATEMENT OF FACTS

On June 17, 2024, after the conclusion of the Phase Two bench trial for this case, this Court issued a Memorandum of Decision that awarded \$394,517,169.00 to Plaintiff Swinomish Indian Tribal Community (“Tribe”). Dkt. # 301. The following day, the Court entered a

MOTION FOR APPROVAL OF SUPERSEDEAS
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PENDING APPEAL - 1

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Judgment to that effect. Dkt. # 302. BNSF will file a notice of appeal by the July 18, 2024 deadline.

Under 28 U.S.C. § 1961(a), the judgment currently accrues interest at an annual rate of 5.12%.¹ BNSF has arranged for the posting of a supersedeas bond in the amount of \$426,007,637.00 upon this Court's approval of the sufficiency of the amount of the security. *See* Declaration of Paul Lawrence ISO Motion for Bond ¶ 2. The bond will be secured by Berkshire Hathaway Specialty Insurance Company, which is an admitted insurer in the State of Washington that may be served through the Office of the Insurance Commissioner of Washington. *See id* ¶ 3; LCR 65.1(a)(2)(iii).

III. ARGUMENT

Under Federal Rule of Civil Procedure 62(b), a party may stay a monetary judgment as a matter of right by posting a supersedeas bond or other security. *See also Mooney v. Roller Bearing Co. of Am., Inc.*, No. 2:20-CV-01030-LK, 2024 WL 664402, at *2 (W.D. Wash. Feb. 16, 2024) ("A party taking an appeal from the District Court is entitled to a stay of a money judgment as a matter of right if he posts a bond in accordance with Federal Rule of Civil Procedure 62(b)." (cleaned up)). The purpose of a bond is to "protect prevailing parties from the risk of a later uncollectible judgment and compensate them for any loss resulting from the stay of execution." *N.L.R.B. v. Westphal*, 859 F.2d 818, 819 (9th Cir. 1988) (per curiam).

¹ *See* 28 U.S.C. § 1961(a) ("Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment."). The weekly average 1-year constant maturity Treasury yield can be found on the Federal Reserve's website. Data Download Program, *Preformatted Package: Weekly Averages*, Board of Governors of the Federal Reserve System, available at <https://www.federalreserve.gov/datadownload/Download.aspx?rel=H15&series=c3ec77dedd37c>

1 A bond may be secured by a monetary deposit equal to the amount of the bond or a
 2 corporation authorized by the Secretary of the Treasury of the United States to act as a surety on
 3 official bonds under 31 U.S.C. § 9301-9306. LCR 65.1. District courts have inherent
 4 discretionary authority in setting supersedeas bonds, including in setting the amount of the bond.
 5 *Rachel v. Banana Republic, Inc.*, 831 F.2d 1503, 1505 n.1 (9th Cir. 1987); *Mills v. Zeichner*,
 6 C23-1130JLR, 2024 WL 1255783, at *2 (W.D. Wash. Mar. 25, 2024). “The stay takes effect
 7 when the court approves the bond.” Fed. R. Civ. P. 62(b).
 8

9 This Court should approve BNSF’s bond of \$426,007,637.00. This amount reflects the
 10 judgment award (\$394,517,169) plus compounded interest on the judgment at 5.12% over 18
 11 months, which is how long BNSF estimates an appeal in this matter will take to conclude
 12 (\$31,490,468.00). Moreover, if for some reason the appeal took longer, there is no concern
 13 BNSF would be able to pay the judgment with all accrued interest. *See, e.g.*, Tr. Transcript, June
 14 3, 2024 at 128: 21-24 (BNSF’s Controller testifying that BNSF consistently maintains cash
 15 reserves in excess of \$2 Billion). This bond amount is more than adequate to “protect the [Tribe]
 16 from the risk of a later uncollectible judgment and compensates [the Tribe] for delay in the entry
 17 of final judgment” during an appeal. *Westphal*, 859 F.2d at 819.
 18

19 IV. CONCLUSION

20 BNSF respectfully requests that this Court approve BNSF’s bond of \$426,007,637.00,
 21 staying enforcement of the judgment during the pendency of its appeal.
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26 [9aa112f71c9eba34b50&lastobs=52&from=&to=&filetype=csv&label=include&layout=seriescol
 27 umn&type=package](#) (last accessed July 2, 2024).

MOTION FOR APPROVAL OF SUPERSEDEAS
 BOND TO STAY ENFORCEMENT OF JUDGMENT
 PENDING APPEAL - 3
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1 I certify that this memorandum contains 690 words, in compliance with the Local Civil
2 Rules.

3
4 DATED this 12th day of July, 2024.
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8 s/ Paul J. Lawrence

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12 *Attorneys for Defendant BNSF Railway*
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PENDING APPEAL - 4
No. 2:15-cv-00543-RSL

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